

April 18, 2008

Maine Milk Commission Special Meeting Minutes
Deering Building, Room 233
Augusta, Maine 04333

Notices for the April 18, 2008 meeting were distributed to Commission members, intervenors and other interested parties March 21, 2008 and sent to the Secretary of State's Office for posting on March 21, 2008.

Commission Present: Chair, Michael Wiers, Richard Cook John Joseph Jr. and Tim Drake, *ex-officio*.

Commission Absent: Colon Durrell.

Department Officials: Agriculture Commissioner Seth Bradstreet III.

Staff Present: Stan Millay, Executive Director, Audrey Shorty, Resource Administrator and Carol Gauthier, Office Associate.

Legal Counsel: Amy Mills, Assistant Attorney General.

Intervenors Present: John Blake, H.P. Hood, Inc., Tom Brigham Oakhurst Dairy John Economy Garelick Farms of Maine and Julie-Marie Bickford Executive Director, Maine Dairy Industry Association (MDIA).

Others Present: Dale Cole and Fred Hardy from MDIA, John Stoughton, Brian Wright, Walter & Edna Fletcher, Galen Larrabee and Chuck Farrand dairy farmers, Dr. George Criner and Lisa Bragg from the University of Maine, also Bill Kay from the Maine Heritage Policy Center and Ruby Hardy, public attendee plus special guest, former Milk Commission member Katherine O. Musgrave.

Meeting called to order at 1:40 p.m. by chair Michael Wiers.

Chairman Wiers announced that Katherine Musgrave has retired from the Commission and introduced Richard Cook who has been nominated to fill her seat.

Agenda Item 1: Minutes: John Joseph made a motion to accept the minutes of the March 21 meeting Richard Cook seconded. Motion passed 3-0.

Agenda Item 2: Amy Mills, Assistant Attorney General: Report held to later agenda items.

Agenda Item 3: Minimum Prices: Stan Millay reported that there is a prevailing premium of \$1.10/cwt on Class I for May 2008 reported by Dairy Marketing Services (DMS) and Agri-Mark Cooperative. In addition to this premium, both Agri-Mark and DMS reported that an additional \$0.75/cwt for milk that comes from producers who do not treat their cows with the rBST hormone will be in affect. Federal Order One Class I price for May is \$19.87. He explained that a schedule was prepared using this information plus a producer cost of production adjustment (COPA) of \$1.16/cwt. where it was for April prices. He stated that this price schedule was for discussion purposes and that the Commission was not bound to them, and should make their pricing determination after hearing testimony. He also directed the Commission to Maine's supermarket survey for April pointing out that Hannaford Stores in Maine had significantly lowered their store brand retail prices to Commission minimums and had reduced their retail price for branded products correspondingly. He stated the

Shaw's had followed Hannaford's lead with similar retail pricing. He said that Wal-Mart had reduced their retail milk prices in some stores, but not in all of them.

Stan Millay provided Agri-Mark's April 1, 2008 forecast of milk prices and the latest update of the short-run breakeven (SRBE) cost of producing milk in Maine prepared by Lisa Bragg from the University of Maine. He pointed out that her estimates for March 2008 are above the support levels by \$1.43/cwt. for tier level one, \$1.20/cwt. for tier level two and \$1.19 for tier level three.

Julie-Marie Bickford thanked Hannaford for taking the initiative and lowering retail milk prices. She went on to thank other retailers who had also lowered their milk prices. She testified that producer costs were up due to higher costs of fuel, fertilizer and feed. She said that spring was a critical time for most producers because they are just beginning planting season. She asked that the Commission consider these higher producer costs while setting minimum prices and said even small amounts help.

Dale Cole echoed Ms. Bickford by thanking Hannaford for taking the lead on lowering retail milk prices at this critical time for consumers experiencing higher food prices.

Julie-Marie Bickford presented a handout of a Kennebec Journal news article that provided information about tax increases on beer, wine and soft drinks that she said would take more consumer dollars.

Tom Brigham said that he would support an increase in the cost of production adjustment from \$1.16/cwt. to \$1.27/cwt.

Julie-Marie Bickford asked where the breakpoints in the pricing schedule were.

Stan Millay responded saying that more than \$1.24/cwt. moved the minimum price up one cent per gallon. He said the next breakpoint was over \$1.35/cwt. which raised the minimum price two cents per gallon and then \$1.46/cwt. was the next.

Julie-Marie Bickford urged the Commission to give the producers as much as possible.

John Blake told the Commission that the decrease in the Class I would decrease the retail price of milk outside of Maine and any added costs in Maine would increase the gap between Maine and outside of Maine.

Dale Cole asked if retailers dropped prices outside of Maine as they did in Maine. He said costs were up for producers and any increase would be very helpful.

John Blake responded to the question saying there was a different pricing scheme outside Maine and that prices did not change with Maine's recent retail price decreases.

John Joseph made a motion to set the cost of production adjustment at \$1.35/cwt. and adopt schedule #05-08 that included a \$19.87/cwt. Class I Price as announced by Federal Northeast Milk Market Administrator, plus \$1.85/cwt. as prevailing in neighboring states, plus \$1.16/cwt. for a handling fee and plus a \$0.20/cwt. processor assessment, for a total dealer Class I cost of \$24.43/cwt. Richard Cook seconded.

Tom Brigham asked the Commission to be cautious of using breakpoints and rounding when setting minimum prices. He said he did not want to see a precedent set.

Julie-Marie Bickford told the Commission she would support that concept along as everyone understood that it worked both ways.

Motion passed 3-0

Agenda Item 4: Maine Monthly Price Survey: The Commission reviewed the Maine price survey for April 2008 which included prices for Augusta and Bangor and reviewed the IAMCA price survey for January and February.

Agenda Item 5: Next Scheduled Meetings:

- May 23, 2008, Friday 1:30 p.m.
Room 233, Department of Agriculture, Food & Rural Resources, Augusta ME
- June 20, 2008, Friday 1:30 p.m.
Room 233, Department of Agriculture, Food & Rural Resources, Augusta ME
- July 18, 2008, Friday 1:30 p.m.
Room 233, Department of Agriculture, Food & Rural Resources, Augusta ME
- August 22, 2008, Friday 1:30 p.m.
Room 233, Department of Agriculture, Food & Rural Resources, Augusta ME
- September 19, 2008 Friday 1:30 p.m.
Room 233, Department of Agriculture, Food & Rural Resources, Augusta ME

John Joseph reported that he would not be able to attend the May meeting. Richard Cook said he was a maybe for the May meeting.

Agenda Item 6: Other:

1. **Milk Commission Budget:** The Commission reviewed the latest budget summary.
2. **Cost of Production Study:** Lisa Bragg reported that the cost of production study is on track with producer surveys mailed out. She said that just under 100 surveys have been returned thus far. She asked that producers be encouraged to return the surveys as soon as possible.

Milk Promotions: The Commission received a written report from Amy Mills concerning coupons and promotions in general. The Commission had asked Ms. Mills at the April meeting to review the law and report back. The promotion in question involves a coupon that comes with a purchase of a gallon of milk. The coupon is good for 75 cents off cottage cheese or sour cream (Tom Brigham stated at the March meeting that the cost of the promotion did not compromise the minimum price of milk and was not destructive of minimum milk prices because the cents off is offered on non-regulated containers of cottage cheese and sour cream.)

Amy Mills discussed the information briefly with the Commission and suggested that they take a few minutes to review it.

Chairman Wiers said he believed the Commission needed time to review the material and should postpone discussion on it until a future meeting. The Commission agreed to place the issue on the June 20, 2008 meeting agenda.

3. **Dealer Cost and Accounting System:** Stan Millay reported that no action had taken place on this item since the last meeting.
4. **Chapter 2 Hearing Procedure:** Stan Millay reported that no action had taken place on this item since the last meeting.
5. **CVS Stores:** Stan Millay reported that a letter has been received from CVS explaining outlining the steps that have been put into place to ensure future compliance with Milk Commission laws. He said the response met the request that had been made to CVS.

Stan Millay provided information developed by Lisa Bragg and George Criner on the impact of fuel and resin costs on dealer margins. He reported that a public hearing is scheduled for the May 23rd meeting to hear testimony on this information to determine if dealer margins need to be revised.

Stan Millay reported that the Commission currently licenses some retailers as dealers because they take on the role of dealer in the case of milk that they import into Maine through their own warehouse distribution systems. (Integrated Operation). He said, for example, that a store brings packaged milk into Maine on their trucks and distributes to their Maine stores. This store is the first entity to handle the milk within the State thus acting as dealer for that milk.

He explained that this store also has direct store delivery of milk from licensed Maine dealers such as H.P. Hood, Garelick Farms and Oakhurst Dairy. For this milk, this store is a retailer and has no dealer obligations. (Retailer/Maine Dealer).

He noted that this is true of Shaw's, Hannaford, Wal-Mart, Sam's and Associated Grocers.

He stated that this licensing of retailers as dealers within the scope of an integrated operation is relatively new and has expanded with the growth of organic milk and other milk that comes ultra-pasteurized with an extended shelf life.

He reported that it seems some Maine dealers would like to sell milk "licensed dealer to licensed dealer or sub-dealer" at the Maine minimum wholesale price and then "pay" that dealer to distribute the milk. He described the scenario as licensed Maine processor to Retailer/Licensed Maine Dealer where the Retailer/Licensed Maine Dealer would then distribute the milk to their stores. He said as he understood it, that the processor saves some distribution costs that are built into the minimum price and pays some of this savings to the Retailer/Licensed Maine Dealer who is going to the stores anyway; all in the name of efficiency, fuel savings and labor savings.

Stan Millay asked the Commission to consider:

1. Does this type of transaction violate the Commission minimum wholesale price statutes by allowing a Maine processor to sell to a Maine retailer at something below the minimum price? (The amount below minimum would be the amount "paid" to distribute).
2. If it is ok to shift the distribution costs, when does the amount "paid for this distribution" become unreasonable?

Dr. Criner said that he would look at the dealer margin model and report back to the Commission on how these questions would affect the minimum wholesale prices. He also mentioned that some advertising allowances could be added to the minimum dealer costs which could in turn be used for promotion.

Julie-Marie Bickford told the Commission that they should be very careful about adding promotion allowances to the minimum dealer costs.

Stan Millay reported that Bell's Calais IGA Foodliner had sold milk below the minimum prices during April. Specifically, this store had offered and sold gallons of whole milk for \$3.47, 2% for \$3.37, 1% for \$3.29 and skim for \$3.26 while the Maine Milk Commission minimums were \$3.63, \$3.53, \$3.45, and \$3.42 respectively. He reported that he brought this problem to the attention of Joe Footer who stated that he had just changed milk prices using the latest minimum price schedule. Stan said that he faxed a current price to Mr. Footer who said he would immediately correct the problem.

Stan Millay informed the Commission of a 2004 violation by this same store of selling below the Commission minimums prices. He reported that the 2004 incident was filed with the receipt of a letter from this store stating that they would put steps into place that would eliminate future violations.

The Commission asked Amy Mills to consult with staff and report back with enforcement recommendations.

Michael Wiers congratulated Katherine Musgrave on her retirement from the Milk Commission, thanked her for her many years of service and said that the dairy industry would miss her. He presented her with her name plate.

Agriculture Commissioner Bradstreet presented Katherine with a letter from Governor Baldacci thanking her for her many years of service and dedication to nutrition and the Maine dairy industry.

Katherine thanked the Governor, Commissioner Bradstreet, the Milk Commission and others present for their kind thoughts and remarks. She said she would miss working on the Commission and wished everyone the best.

Agenda Item 7: Executive Session: The Commission did not go into Executive Session.

Adjourned: 2:40 p.m. (60 minutes).

Stanley Millay, Executive Director, Maine Milk Commission.